IN THE UNITED STATES DISTRICT COURT

FOR THE DISTR	ICT OF HAWAII
WAYNE BERRY, Plaintiff, vs. HAWAII EXPRESS SERVICE, INC., et al., Defendants.) CIVIL NO. CV 03 00385 SOM LEK) (Copyright))) THE POST CONFIRMATION TRUST) FOR THE FLEMING COMPANIES,) INC.'S MOTION IN LIMINE TO) EXCLUDE EVIDENCE REGARDING) SOFTWARE WHICH IS NOT THE) SUBJECT OF THIS CASE)))))))))))))))))))

MOTION TO EXCLUDE EVIDENCE REGARDING SOFTWARE WHICH IS NOT THE SUBJECT OF THIS CASE

Defendant, Fleming Companies Inc., hereby moves to prohibit the plaintiff from using or referring to any of the following Exhibits: 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 26, 27, 29, 41, 45 and 92.

Each of these exhibits is directed to software which is not the subject of this case and which has nothing to do with the issues to be presented to the jury.

Accordingly any use or reference to these exhibits will distract the jurors from the proper subject matter of this case.

This motion is based upon Rule 7 of the Federal Rules of Civil Procedure and Rules 401 and 402 of the Federal Rules of Evidence, and is supported by the Memorandum in Support of Motion, Declaration of Lex R. Smith, and Exhibits attached hereto and the records and files herein.

Dated: Honolulu, Hawaii, January 3, 2006.

KOBAYASHI, SUGITA & GODA

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